

2. For many years I served as the bald eagle species expert for the USFWS. I was the Bald Eagle Recovery Coordinator for the USFWS between 1993 and 2007. In that position, I collected data from the States and other entities nationwide, particularly the annual nesting data. I reviewed the data to track the status of the bald eagle nationwide. I coordinated efforts and drafted documents related to the bald eagle's change in status under the ESA. Between 2007 and 2009 I served as Bald Eagle Monitoring Coordinator and led the USFWS team that developed a post-delisting monitoring plan for the bald eagle. I will be retiring on June 1, 2012 after thirty-seven years with USFWS.
3. Through my work with USFWS I learned that the first legal protection specifically for bald eagles was the Bald Eagle Protection Act of 1940. I also learned that passage of the Bald Eagle Protection Act was prompted by widespread shooting of the bald eagle and the concern of Congress that our National symbol was in peril and needed unique legal protection. In order to fully explain my understanding of the purpose of the Bald Eagle Protection Act, I went back to my resources and looked at Congress' explanation for the reason it was enacted. The beginning of the 1940 Act itself provided:

Whereas the Continental Congress in 1782 adopted the bald eagle as the national symbol; and

Whereas the bald eagle thus became the symbolic representation of a new nation under a new government in a new world; and

Whereas by that act of Congress and by tradition and custom during the life of

*this nation, the bald eagle is no longer a mere bird of biological interest but a symbol of the American ideals of freedom; and
Whereas the bald eagle is now threatened with extinction...*

Congress went on in the 1940 Act to provide it with federal protection in the lower 48 states. Although the State of Alaska was exempted from the Act at this time, eventually the numbers of bald eagles declined in Alaska as well due to shooting for bounty. The Alaska Department of Fish and Game's web site offers the following:

Claims by fox farmers and fishers of eagle depredations caused the Alaska Territorial Legislature in 1917 to impose a bounty system on eagles. These claims were later found to be mainly false, but over 100,000 eagles were killed before the bounty was removed in 1953. With statehood in 1959, the Bald Eagle in Alaska received federal protection under the Bald Eagle Protection Act of 1940.

4. The Bald Eagle Protection Act was amended in 1962 to include golden eagles due the similarity in appearance of golden and bald eagles prior to adulthood. Thus, the bald eagle and golden eagle are some of our Nation's most protected birds.
5. In 1967, the Secretary of the Interior listed bald eagles south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966. In 1973 the Endangered Species Preservation Act of 1966 was replaced by the Endangered Species Act ("ESA"), and in 1978 the USFWS listed the bald eagle, pursuant to the ESA, as endangered throughout the lower 48 States, except in Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was designated as threatened. This listing was the result of diminishing numbers of bald eagles throughout the lower 48 States. Factors that caused this decrease included loss of

habitat and the widespread use of DDT following World War II that resulted in reproduction failure for bald eagles.

6. In 1972 eagles, hawks, and owls were included as “migratory birds” under the Migratory Bird Treaty Act, and thus then became protected under that Act.
7. As a consequence of protections afforded under these Acts and the banning of DDT in 1972, bald eagle population numbers have increased over its range. In 1999, the bald eagle was proposed for removal from the List of Endangered and Threatened Wildlife (64 Fed. Reg.36455). Among the comments received on the proposed delisting rule were numerous questions concerning the protections the bald eagle would still have under other Federal laws when it is no longer protected under the ESA. However, one of the factors supporting delisting is that other existing regulatory mechanisms currently in place are adequate to protect the larger bald eagle population.
8. On August 9, 2007, the USFWS removed the bald eagle from the List of Threatened and Endangered Species, estimating the number of nesting pairs of bald eagles for the lower 48 states at that time to be over 9,700 nesting pairs, using data provided by the states and other partners (72 FR 37346).
9. While 9,700 nesting pairs provided sufficient population numbers to protect bald eagles from the threat of extinction, take of bald eagles remains highly restricted

based on the Bald and Golden Eagle Protection Act (BGEPA) and MBTA. In 2007 the USFWS also published new regulations providing a definition of “disturb” under the Bald and Golden Eagle Protection Act and National Bald Eagle Management Guidelines. (73 Fed. Reg. 29075). The purpose of the regulations and guidance is to further clarify the protections afforded to eagles under other statutes following delisting; to reduce the possibility of the public unintentionally or unknowingly violating the BGEPA or the MBTA after the bald eagle is delisted; and to continue to offer flexibility in regulating impacts to bald eagles resulting from human activities. Without the BGEPA and MBTA protections, the status of the bald eagle could again deteriorate significantly through death or injury of bald eagles due to hunting or other man-made threats.

10. Natural factors related to bald eagle reproduction exacerbate the impact of death or injury of bald eagles on the conservation status of the bald eagle. Bald eagles do not mature (that is, reproduce) until they are between four and six years old. Once they begin producing young, they do so at a rate of, on average, two eggs per year. Incubation is about 35 days, and once they hatch it is several months before they leave the nest, i.e. fledge. Of the eggs produced, bald eagle pairs average only one offspring fledged (successfully leaving the nest) per year. Survival to maturity may be as low as 50% of the birds fledged (Harmata, A.R., G.J. Montopoli, B. Oakleaf, P.J. Harmata and M. Restani. 1999. Movements and survival of bald eagles banded in the Greater Yellowstone Ecosystem. Journal of

Wildlife Management 63:781-793).

11. While it is not known whether old age would result in a lack of sexual reproduction at some point, it is presumed that adults remain reproductively active as long as they are alive. The average life span varies greatly. A major study of bald eagles in Arizona found the lifespan to be no more than ten or twelve years. The oldest wild record is about 28 years of age.
12. This relatively late reproductive maturity and low productivity mean that the bald eagle population increases at a very slow rate. The bald eagle's key to success is survivability of the adults (as opposed to the production of large numbers of young early and frequently).
13. If a bald eagle loses its mate before nesting occurs, it might find a new mate and reproduce that same year. Although it is commonly said that bald eagles mate for life, studies to document that fact are few. If a bald eagle lost its mate after young were hatched, the chances of the young surviving would decrease.
14. The loss of an adult breeding pair may be equivalent to the loss of 10 – 15 fledgling eagles due to the long-term loss of reproductive capability. On an annual basis, that would be the entire reproductive capacity of 10 to 15 pairs of bald eagles for a year. Certainly, the population can withstand some individual

populations may be affected). But on a long-term or widespread basis, unregulated take of mature bald eagles can depress, and potentially endanger the population as shown in the early 20th century.

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing are true and correct to the best of my current knowledge.

Executed on May 15, 2012, at Moline, Illinois.

Jody Gustitus Millar
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